

BIOGRAPHICAL DATA SHEET

NAME: DAVID C. MADAY

CR-88-00035

ADDRESS: 5 Brittany Lane
Buffalo, New York

AGE: 40

VIOLATION: Title 18, United States Code,
Sections 2252 and 1461

PENALTY: \$2252 - 10 years imprisonment and/or
\$100,000 fine
\$1461 - 5 years imprisonment and/or
\$5,000 fine

CUSTODY STATUS:

BAIL:

ATTORNEY: Mark Mahoney, Esq.

ADDRESS: 1500 Statler Towers
Buffalo, New York 14202

TELEPHONE NO.: 853-8190

*Arraigned Fri 2/19/88
@ 8:45 AM*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

AFFIDAVIT
Cr. 88-35E

DAVID C. MADAY,

Defendant

STATE OF NEW YORK)
COUNTY OF ERIE)
CITY OF BUFFALO) ss:

DAVID C. MADAY, being duly sworn, deposes and says:

1. I make this affidavit in support of the present motion to suppress.

2. On June 19, 1987, at approximately 1:00 p.m., two federal agents went to my place of business, showed me a search warrant, and told me to go with them to my house located at 5 Brittany Lane, Buffalo, New York.

3. I went with the two agents to my house and upon our arrival there, was met by approximately six other federal, state and local agents.

4. The federal agents showed me the search warrant and told me to show them the location of a certain video cassette which I had obtained the day before at the post office.

5. I was told by the Postal Inspector, a federal agent, that if I told them where the video cassette was located, they (the agents) would not "turn" my house "upside down".

6. All of the individuals who were at my house were

wearing plain clothes.

7. I was given no explanation as to why state and local officials were there.

8. I led the agents to the cabinet where the video cassette was located.

9. The detectives found the video cassette, to which they had previously made reference.

10. The agents went through the rest of my cabinet and seized several other video cassettes, including some entitled "The Honeymooners" (2); "Grand Island Nebraska"; "National Geographic 'History of Space'"; "2001 : A Space Odyssey"; "Victory at Sea", and more.

11. None of the other video cassettes seized depicted individuals under the age of eighteen years.

12. The agents then proceeded to search my entire house and seize a wide range of articles not referred to in the warrant. This search continued upstairs to my office.

13. I had a locked gun case in my office. The gun case contained several handguns, registered to me as well as my pistol permit. Among the weapons in my gun case were a .45 caliber revolver which had belonged to my father during the war, and a .32 caliber handgun.

14. The serial number on my pistol permit and any on the guns inside were not observable through the locked gun case.

15. The detectives threatened to forcibly open my gun case and directed me to it and give them my gun permit, which was

them over, and searched for serial numbers.

17. I was then told by the detectives to wait downstairs.

18. In the meantime, all of the detectives (approximately 8) had split up and proceeded to search the entire house.

19. The detectives seized the .45 caliber revolver, the .32 caliber handgun and a starter pistol.

20. When I returned to my office later, I observed that the best gun I owned, a .38 caliber Police Chief Special handgun was missing.

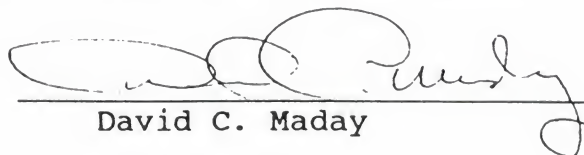
21. Later, the detectives observed a locked safe in my garage.

22. They requested that I unlock the safe. I could not unlock the safe, because I did not have the combination, and I told this to the detectives, as well as the fact that the safe had been left in the house when I bought it, and I was going to convert it into a table, and was not utilizing the safe as a safe.

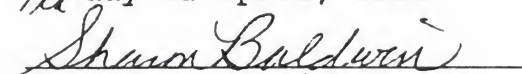
23. The detectives brought in a locksmith who drilled holes in the safe and opened it. They found old bonds and certificates which they did not seize.

24. While the search was being conducted, other agents who were not identified to me, came to my house and joined in the search.

25. At approximately 8:00 p.m., the agents left my house. The search lasted a total of approximately seven hours.


David C. Maday

Sworn to before me this
7th day of April, 1988.


Notary Public

SHARON BALDWIN
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 11/30 1988

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

SUPPLEMENTAL AFFIDAVIT

Cr. No.: 88-35E

DAVID C. MADAY,

Defendant

ORIGINAL
RECEIVED AND FILED
UNITED STATES DISTRICT COURT CLERK
WESTERN DISTRICT OF NEW YORK

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

JUL 19 1988

BY: C. J. J. J.

MARGARET M. PRICE, being duly sworn, deposes and says:

1. I am associated with the law firm of Bermingham, Cook & Mahoney, P.C., attorneys for defendant David C. Maday, am familiar with the facts stated herein, and make this supplemental affidavit in support of the present motion to suppress.

2. As stated in my reply affidavit dated June 14, 1988, in the year 1987, there were 249 indictments under the Federal Child Pornography Statute. According to U.S. Justice Department figures, over 200 of those indictments were pursuant to two federal undercover programs: "Operation Looking Glass" and "Operation Borderline".

**The Government in other cases
has conceded that the "warning" disclaimer
injects fatal ambiguities into the brochure**

3. In a case now pending in the United States District Court, Eastern District of New York, United States v. Mrva, (Cr. No. 87 CR 619), the government also used the Far Eastern Trading Co., Ltd. ("Far Eastern"), to solicit the defendant.

Similarly, a search warrant was obtained. This operation, was identified in ¶2 of the Mrva warrant application as part of the national "Project (Operation) Looking Glass".

4. Much of the phraseology and allegations contained in the Mrva warrant application are nearly identical to the allegations contained in the Maday warrant application. A copy of the Mrva warrant application is annexed hereto as Exhibit A.

5. Mrva involved two Far Eastern solicitations that differed in only one critical respect very relevant here. The first Far Eastern solicitation contained the same brochure that was sent to Mr. Maday; this brochure contained the same warning as here:

WARNING

All of the material described in the following pages is sold by Far Eastern Trading Co. Ltd., for education purposes only. There are no visual depictions of any person under the age of eighteen (18)...(emphasis added).

The defendant in Mrva ordered three magazines from the first Far Eastern catalog prior to December 25, 1986.

6. However, on or about May 11, 1987, Far Eastern sent Mrva a second brochure. Accompanying the second brochure was a letter apologizing for the "long delay" occasioned by Far Eastern's difficulties with "the copyright holders" of the materials it had been advertising. This letter requested him to replace his order using the new brochure. Accordingly, Mrva

replaced his same order as well as an order for an additional magazine not contained in the first Far Eastern catalog. The second Far Eastern brochure did **not** contain the warning.

7. It was not until the second brochure, without the disclaimer, that the Postal Inspectors delivered the child porn they produced to Mrva and sought the warrant to search the defendant's house. The warrant was executed at Mrva's house on June 10, 1987.

8. The removal of the warning from the second Far Eastern brochure demonstrates the Postal Service's awareness of the fatal ambiguity which the warning creates.

9. No other reason appears for the removal of the warning in Mrva and the sending of the second brochure than the government's awareness that it created a fatal ambiguity with respect to the contents of the materials advertised.

10. The search warrant here was executed by the same governmental agency on June 19, 1987, 9 days after the Mrva warrant execution.

11. Here the Postal Inspectors simply failed to attempt to correct the mistake which they attempted to correct in Mrva, although it is clear they were aware of the defects and had just as much time to correct them.


12. Unlike the Mrva case, the warning here was not removed in a timely manner. Thus, for the same reasons the government saw fit to remove the warning in the Mrva case, the warrant here must fall.


MARGARET M. PRICE

DIANE E. RUSSO
Notary Public, State of New York
Qualified in Erie County
My Commission Expires April 18, 19 90

Sworn to before me

this 19th day of July, 1988.


Notary Public